

November 7, 2019

Carolyn M. Murray
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Carrie Benedon, Esq.
Director, Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: Town of Wellfleet – Selectboard
Open Meeting Law Complaint from Judith Ahern dated October 22, 2019

Dear Attorney Benedon:

Please be advised that this office serves as Town Counsel to the Town of Wellfleet. The Town's Selectboard ("Board") is in receipt of an Open Meeting Law Complaint dated October 22,¹ which the Board received on October 25, pertaining to an alleged violation regarding the Board's discussion of a letter it received from the Planning Board. Copies of the Complaint, the e-mail, and the Board's minutes² are enclosed here. The Board was required to call a Special Meeting in order to timely respond to Ms. Ahern's latest Complaint. The Board met on November 6, in accordance with an item included on a properly posted meeting notice for such purposes, to discuss this Complaint and consider its response, and authorized me to respond to the same on its behalf. The Board's response is included below, provided in accordance with G.L. c.30A, § 23 and 940 CMR 29.05(5).

The Complaint alleges that the Board violated the Open Meeting Law by discussing the letter it received from the Planning Board at an open meeting on September 24, which related to an earlier e-mail sent by the Complainant. As a remedy therefore, the Complainant requests that the Board publically apologize and retract their comments about her, obtain new Town Counsel, reprimand Town Administrator Dan Hoort for the "intentional" mishandling of the situation, and educate themselves about the First Amendment to the United States Constitution.

After reviewing the allegations, it is Board's position that the Selectboard has not violated the Open Meeting Law. While the Board encourages the filing of citizen complaints when it or any other board does not comply with its serious obligations under the Open Meeting Law, G.L. c. 30A, §§ 18-25, the Board respectfully requests that Ms. Ahern not be allowed to misuse the Open Meeting Law, when the facts do not support a violation, simply to advance her personal agenda. See OML 2017-172 (noting that filing of such complaints "wastes both municipal and Commonwealth resources"). Indeed, it is a significant financial burden to the Town to be required to schedule

¹ All dates refer to the year 2019, unless otherwise indicated.

² Please note that the document entitled "Wellfleet Selectboard Meeting 9/24/19 beginning at 2:34:05," attached to the Complaint, appear to be Ms. Ahern's personal transcription of the Board's meeting and are not the official minutes. While the transcript introduced by Ms. Ahern appears to be accurate, the official meeting minutes and video recordings of the Board's meetings are all made available on the Town's website and are free of charge to the public.

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special meetings in order to discuss and prepare a response to each of the filings by Ms. Ahern, when those filings do not allege any actual violations of the Open Meeting Law.

Discussion of Letter from the Planning Board

By way of background, as discussed in an earlier response to Ms. Ahern's Complaints regarding this matter, the following sequence of events occurred. On September 10, Ms. Ahern sent an e-mail to the Selectboard regarding the candidacy of Planning Board Chairman Gerry Parent for an appointment to the Cape Cod Commission. In it, she stated: "If this ridiculous idea [that Mr. Parent fill the vacancy] is pushed forward, I will start my assault on the Planning Board. Understood?"

On September 13, the Town Administrator forwarded Ms. Ahern's e-mail to Mr. Parent and requested advice from Town Counsel in response to the same. The Planning Board subsequently discussed the e-mail at its meeting on September 18, and, in light of Ms. Ahern's tone and threatened assault on public officials, decided that prompt action was required. As such, on September 18, the Planning Board voted to send a letter to the Selectboard requesting that the Selectboard address the matter appropriately.

The Selectboard received the letter from the Planning Board and included it as a topic of discussion on its meeting notice for the September 24 meeting. The Board acknowledges that the agenda could have been more specific and reference Ms. Ahern by name. The Planning Board's letter in response to Ms. Ahern's e-mail was included in the meeting's agenda packet, which was posted on-line 48 hours prior to the meeting. On September 24, the Board openly discussed the Planning Board's request, including issuing a potential statement that the Board does not condone threats of violence, personal or disparaging attacks, or disruptive and counterproductive behavior, while also respecting and acknowledging citizen's freedom of expression. In light of the common usage and understanding of the word assault, the Board also thought it prudent to make the police department aware of the threat and authorize a response to Ms. Ahern. Finally, because the Board discussed the document at a public meeting, they moved to make public the e-mail. A copy of Ms. Ahern's e-mail is attached hereto.

As you are well aware, the purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. G.L. c. 30A, §§ 18-25. Here, however, the undisputed allegations regarding the Board's discussion and vote at its open meeting do not invoke any provisions of, or concerns underlying, the Open Meeting Law. Id.

First, while the Complaint is also against the Town Administrator and Town Counsel and demands remedial action against said individuals, the Town Administrator and Town Counsel are not public bodies and thus are not subject to the Open Meeting Law. G.L. c. 30A, § 18. Second, the

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Board openly discussed the letter from the Planning Board at a properly posted open meeting held on September 24. Discussion of the Planning Board's letter was listed as a topic on the meeting notice, and a copy of the Planning Board letter was included in the meeting packets posted on-line. Third, the Open Meeting Law does not require that the Board notify Ms. Ahern that they will discuss in open session a letter drafted in response to an e-mail she sent to the Board. Like any member of the public, Ms. Ahern is welcome to attend any public meetings. Indeed, as the Board acknowledged, it is receptive to Ms. Ahern's "well-informed" and "researched" responses to various Town issues, so long as her responses do not threaten, confront, or attack public officials, volunteers, or other involved parties. See Minutes for the Selectboard Meeting of Sept. 24, 2019, attached. The Selectboard's minutes are also posted on-line at https://www.wellfleet-ma.gov/sites/wellfleetma/files/minutes/2019_09-24_selectboard_minutes_-_approved_2019_10-07.pdf. Finally, the remedies sought by Ms. Ahern are not appropriate solutions or forms of relief available under the Open Meeting Law. See G.L. c. 30A, § 23(c) (specified statutory remedies do not include orders compelling Board to obtain new Town Counsel, issuance of public apologies, or retracting comments made at public meeting). Indeed, the Board asserts that the form of the remedies sought by Ms. Ahern merely amplify her true intentions, i.e. to threaten and bully public officials.

Accordingly, the Board respectfully submits that the Complaint alleges no violation of the Open Meeting Law and that no remedial action is necessary. The Board further requests that Ms. Ahern be estopped or discouraged from future filings which, based on undisputed facts in the record, do not allege any violations of the Open Meeting Law. The importance of the Open Meeting Law should neither be undercut nor manipulated in this manner at the burden and expense of the Town and Commonwealth. The Board takes its obligations under the Open Meeting Law very seriously and strives to ensure compliance with the Open Meeting Law at all times.

In addition, the Board wishes to address a pattern of concerning and unnecessary behavior exhibited by the Complainant, not just with regard to this last complaint against the Selectboard but also with respect to other complaints against the Planning Board and other Town boards over the last year. While Town officials certainly acknowledge and appreciate the rights of citizens to question their public officials and hold them accountable, respectfully, such conduct does not invoke matters within the Division's jurisdiction under the Open Meeting Law. Ms. Ahern's latest complaint is simply a manipulation of the Open Meeting Law to further her personal agenda, i.e. her self-declared "assault" against the Planning Board to the detriment and expense of the Town, a public entity with limited resources, and its officials, many of whom are volunteers. Ms. Ahern's direct, unwarranted, and concerning threats against the Planning Board, a public body acting in good faith, is clearly inappropriate and should not be condoned under any circumstance, including pursuant to the provisions of the Open Meeting Law.

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Please do not hesitate to contact me if you have any questions or concerns with respect to this matter.

Very truly yours,

Carolyn M. Murray

CMM/

Enc.

cc: Ms. Judith Ahern
Members of the Wellfleet Selectboard

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Hon. Janet Reinhart and
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